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**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

Case No. 18-23538 (RDD)

SEARS HOLDINGS CORPORATION, et al.

Chapter 11

Debtors.

**OBJECTION BY OSTER YORKTOWN PROPERTIES, LLC TO PROPOSED CURE
AMOUNT OF \$53,044.00 WITH RESPECT TO STORE NUMBER 9414**

Oster Yorktown Properties, LLC, the landlord of store number 9414 located in Yorktown Heights, New York, objects to the proposed cure amount of \$53,044.00 set forth in the debtors' January 18, 2019 Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transactions (Docket Entry 1731) and says:

1. On or about April 13, 1973, Yorktown Green Shopping Center, Inc., as Landlord, and Caldor, Inc., N.Y., as Tenant, entered into a written Indenture of Lease with respect to the shopping center premises described in the Indenture of Lease, namely, Route 118/Downing Drive, Yorktown Heights, New York. A copy of the Indenture of Lease is attached hereto as Exhibit A.
2. The term of the Indenture of Lease commenced on or about October 17, 1974, and

had a expiration date of on or about October 16, 2001.

3. Effective March 17, 1999, Caldor, Inc., N.Y. assigned all of its right, title and interest in the lease to Kmart Corporation.

4. By letter dated January 4, 2001, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2001 to and including October 16, 2006.

5. By letter dated March 20, 2006, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2006 to and including October 16, 2011.

6. On or about December 22, 2008, Oster Realty Corp., the successor to Yorktown Green Shopping Center, Inc., assigned all of its right, title and interest under the Indenture of Lease to Oster Yorktown Properties, LLC.

7. By letter dated April 21, 2011, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2011 to and including October 16, 2016.

8. By letter dated March 16, 2016, Kmart Corporation extended the term of the Indenture of Lease for five (5) additional years commencing October 17, 2016 to and including October 16, 2021.

9. On November 19, 2018, the Bankruptcy Court entered an Order Approving Global Bidding Procedures and Granting Related Relief (Docket Entry 816), approving global bidding and sale procedures, substantially in the form attached to the order as Exhibit 1, in connection with the sale or other disposition of substantially all of the debtors' assets, among other relief.

10. On January 14, 2019, the debtors commenced an auction for the sale of the debtors' assets. As announced on the record at the auction, the debtors determined that the offer submitted by Transform Holdco, LLC was the highest or best offer for the debtors' assets. The debtors executed an asset purchase agreement, dated January 17, 2019, with Transform Holdco, LLC.

11. In accordance with the assumption and assignment procedures and the global bidding procedures order, the debtors may, in connection with the global asset sale transaction, seek to assume and assign to the successful bidder certain leases of the debtors.

12. One of the leases included in the successful bid that may be assumed and assigned in connection with the global asset sale transaction is the lease between Oster Yorktown Properties, LLC and Kmart Corporation, store number 9414, described above.

13. According to the debtors' January 18, 2019 Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transactions (Docket Entry 1731), the debtors' proposed cure amount for the lease in question, number 341 on the last page of the 342-page Notice, is \$53,044.00. As detailed below, this amount is NOT CORRECT.

14. There currently exist financial defaults under the unexpired lease between Oster Yorktown Properties, LLC and Kmart Corporation. Under § 365(b)(1) of the Bankruptcy Code, the lease may not be assumed unless, at the time of assumption, the debtors pay the following amounts:

- a. Common area maintenance charges for the six months from July 1, 2018 to December 31, 2018.....\$110,255.22
- b. Real estate tax charges \$315,733.86

TOTAL \$425,989.08

The documents supporting the unpaid common area maintenance charges are attached hereto as Exhibit B, and the documents supporting the unpaid real estate tax charges are attached hereto as Exhibit C.

15. Although the \$425,989.08 represents the amount necessary to cure the debtors' existing defaults under the Indenture of Lease as of January 25, 2019, this amount may increase as a result of additional defaults between January 25, 2019 and the effective date of the assumption of the Indenture of Lease, and Oster Yorktown Properties, LLC reserves the right to increase the required cure amount from \$425,989.08 to an amount that takes into account the required cure amount as of the effective date of the assumption of the Indenture of Lease.

WHEREFORE, Oster Yorktown Properties, LLC respectfully requests that an order be entered determining that the amount necessary to cure the debtors' defaults under its unexpired lease of nonresidential real property with Oster Yorktown Properties, LLC be fixed at \$425,989.08 as of January 25, 2019, plus the amount of any and all additional defaults that the debtors are required to cure as of the effective date of the assumption of the lease in question.

LASSER HOCHMAN, LLC
Attorneys for Oster Yorktown
Properties, LLC

DATED: January 25, 2019

By: /s/ Richard L. Zucker
RICHARD L. ZUCKER, ESQ.